

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

Mario E. Castro, Magdalena Castro,

Petitioner(s),

v.

Case No.: 3:20-cv-00264

THE BANK OF NEW YORK MELLON,
Charles W. Scharf, AKERMAN LLP,
Natsayi Mawere, Joseph DeFazio, NewRez
LLC D.B.A. SHELLPOINT MORTGAGE
SERVICING, Jack Navarro, REAL TIME
SOLUTIONS, Eric C. Green, Bank of
America Corporation, Brian Moynihan, et
al.,

Respondent(s).

**RESPONDENT BANK OF AMERICA, N.A.’S
RESPONSE IN OPPOSITION TO MARIO AND MAGDALENA CASTRO’S
MOTION FOR RELIEF MAY 19, 2020 JUDGMENT, ORDER, OR PROCEEDING**

Respondent Bank of America, N.A., for itself and as successor in interest to BAC Home Loans Servicing, LP (“BANA”) hereby submits the following Response in Opposition to Mario and Magdalena Castro’s (“Petitioners”) “Motion for Relief from May 19, 2020 Judgment, Order, or Proceeding under Fed Rule 60(b)(1)(2)(4) & (6)” [Dkt. 23] (the “Motion”).

This Court already denied Petitioners’ Motion to Confirm Arbitration Award for the fundamental reason that *there was no arbitration agreement between Petitioners and BANA*. See May 19, 2020 Order [Dkt. 9] (the “Order”). Further, the court order and judgment referenced in the Petitioners’ Motion is currently on appeal before the United States Court of Appeals for the Fourth Circuit pursuant to the Notice of Appeal that the Petitioners filed on August 11, 2020.

Although the Fourth Circuit entered an order dismissing the appeal on February 25, 2021, the Fourth Circuit retained jurisdiction over the appeal to address the Petitioners' Petition for Rehearing *En Banc*, which they filed on March 18, 2021. To date, the Fourth Circuit has not issued a mandate or any order for remand returning jurisdiction over the Petitioners' action to this court.

Under federal law, when a notice of appeal is filed in response to a final order, the filing of the notice of appeal divests the district court's jurisdiction over the case and confers jurisdiction over the matter to the court of appeals. *See U.S. v. Christy*, 3 F.3d 765, 767 (4th Cir. 1993). Indeed, the United States Supreme Court has recognized that it is "generally understood that a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount, Co.*, 459 U.S. 56, 58 (1982).

Because the final judgment for which the Petitioners seek relief is subject to a pending appeal, this Court lacks subject matter jurisdiction to entertain the Motion, which seeks relief from this court's final order denying Petitioners' Motion to Confirm Arbitration Award.

Accordingly, for the foregoing reasons, BANA respectfully requests that the Court deny Petitioners' Motion and strike the Motion from the docket for this action while Petitioner's appeal is pending.

DATED: June 3, 2021

Respectfully submitted,

MCGUIREWOODS LLP

By: /s/ Brian Calub

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2021, a copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record registered with the CM/ECF system. A copy of the foregoing was also served on the Pro Se Plaintiffs below by U.S. First Class mail:

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Pro Se Plaintiff

Mario E. Castro
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Pro Se Plaintiff

/s/ Brian A. Calub

Brian Calub, N.C. Bar No. 47245